



**AGING COMMITTEE and
HUMAN SERVICES COMMITTEE**

Thursday, February 16, 2023

SUPPORT for S.B. No. 989, An Act Concerning Nursing Homes, with additional language suggested for Section 3

SUPPORT for S.B. 930, An Act Requiring Notice of a Proposed transfer or Discharge of a Nursing Home Facility Resident to the State Ombudsman, with additional language suggested for Section 3

SUPPORT for H.B. No. 6575, An Act Encouraging Socialization for Nursing Home Residents by Providing Transportation for Visits with Family

SUPPORT for H.B. No. 6578, An Act Concerning Air Conditioning In Nursing Homes

SUPPORT for H.B. 6627, An Act Concerning the Office of the Attorney General's Proposed Remedies for Deficient Long Term Care

My name is Jean Mills Aranha. I am a volunteer attorney for Connecticut Legal Services, a non-profit legal aid agency. I recently retired from its Elder Law Unit. On behalf of Connecticut's Legal Aid Programs, Connecticut Legal Services, Greater Hartford Legal Aid and New Haven Legal Assistance Association, and our low-income elderly clients, who include the residents of nursing homes and residential care homes, I am submitting my testimony of support for these important bills that will significantly improve the lives of nursing home residents in Connecticut. We appreciate the opportunity to address both Committees today, particularly on the provisions that address transparency, accountability and staffing. These issues are at the heart of what is wrong with our nursing homes today. Residents are suffering and they need help.

SB 989, AAC Nursing Homes and SB 930, AA Requiring Notice of a Proposed Transfer or Discharge of a Nursing Facility Resident to the State Ombudsman

Transparency and Accountability in Discharge Planning

Section 3 of S.B. 989 and Section 1(c)(3) of S.B. 930 each require that notices of the involuntary discharge or transfer of nursing home residents must also be provided

simultaneously to the Long Term Care Ombudsman. Failure to provide a copy to the Ombudsman will invalidate any notice given to the resident. This provision assures that someone other than the resident, who may not understand the notice or perceive its significance, is notified of the proposed transfer.

Except in certain limited circumstances, residents are also **already** required to receive a discharge plan **developed by facility health care personnel**, as well as **the above mentioned** notice of intent to discharge. This plan's purpose is to minimize the disruptive effects of the transfer or discharge on the resident by considering the feasibility of placement near the patient's relatives, the acceptability of the placement to the resident, and any other relevant factors that will affect the resident's adjustment to the move. The plan must include an evaluation of the effects of the transfer or discharge on the resident and a statement of the action taken to minimize such effects, as well as the care and services that the resident shall receive at the new location.

We believe that this discharge plan should also be provided to the Long Term Care Ombudsman **at the same time that they receive the discharge notice**. As the plan is required to be prepared and provided to the resident, it should not be difficult to provide it to the Long Term Care Ombudsman as well. Our suggested language to be added to both SB 989 and SB 930 reads as follows:

Sec. 3. Subsection (c) of section 19a-535 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(3) On the date that the facility provides notice of a proposed involuntary transfer or discharge of a resident pursuant to the provisions of subdivision (1) of this subsection, the facility shall notify the State Ombudsman, appointed pursuant to section 17a-405, in a manner prescribed by the State Ombudsman, of such proposed involuntary transfer or discharge **and provide a copy to the State Ombudsman, of the discharge plan required to be developed in 19a-535(e)**. Failure to provide notice **and a copy of the discharge plan** to the State Ombudsman pursuant to the provisions of this subdivision shall invalidate any notice of the proposed involuntary transfer or discharge of a resident submitted pursuant to the provisions of subdivision (1) of this subsection.

Transparency and Accountability in Cost Reporting

Section 6 of S.B. 989 creates a requirement for transparency in cost reporting by nursing homes. This language calls for narrative summaries of expenditures, including the percentage of Medicaid funding allocated to the five **allowable** cost components by the nursing home as well as by any related party. Furthermore, the Commissioner of Social Services will be required to conspicuously post these cost reports and summaries on the Department's website, along with comparisons between individual

nursing homes by expenditures, and a summary of the average reported expenditures by facility for each category. Requirements for a glossary, explanations and use of plain language will assure that the State, residents, families, advocates and individual citizens can understand clearly how Medicaid expenditures are being used. Fines will be assessed for failure to comply to assure accountability.

Transparency in Ownership and Related Parties

Section 7 of S.B. 989 requires that anyone seeking a nursing home license shall disclose any private equity fund that owns any portion of the business, along with the name of the fund's investment advisor and the most recent quarterly statement provided to investors. There has been a significant increase in private equity ownership of nursing homes nationwide and this transparency about their interests in Connecticut's nursing homes is vital to understanding how our nursing home dollars are being spent.

Section 7 also adds the requirement of providing owner income statements as well as audited and certified financial statements for the most recent fiscal year. Previously this information was optional at the discretion of the commissioner.

Section 8 changes section 17b-340 of the general statutes to provide that each nursing home must disclose a profit and loss statement from each related party that has received **any amount** of income from such facility for goods, services and fees. Prior law required reporting only if the income allocated to a related party was fifty thousand dollars or more.

Improvements and Accountability in Staffing

Section 9 of S.B. 989 mandates a minimum staffing level of 4.1 hours of care per resident per day, and increases the amount of social workers and recreation staff. These are vital provisions and we urge you to pass them.

Inadequate staffing in nursing homes is a longstanding problem. In 1987, Congress passed the federal Nursing Home Reform Act, requiring every nursing home to have sufficient staff to care properly for its residents. Specifically:

The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable level of physical, mental, and psychological well-being of each such resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population...¹

¹ 42 C.F.R. §483.35.

Unfortunately, federal law does not mandate any specific number of hours of care to meet this standard.

In 2000, the federal Department of Health and Human Services (now CMS) issued a report to Congress after nearly ten years of studying the relationship between nursing staff levels and quality of care for residents. Facilities staffing at lower levels had residents with increased risk of bedsores, malnutrition, abnormal weight loss, and preventable hospitalizations. **The study found that a minimum of 4.1 hours of nursing care per resident, per day, was needed to meet the federal quality standards at that time.**² Resident acuity has only increased during the last 20 years, so a similar study today would probably find a higher necessary minimum.

The type of nursing care to be provided should also be explicitly provided in any new standard. The 2000 CMS study found that .75 hours of RN time, .55 hours of licensed practical nurse time, and 2.8 hours of certified nursing assistant time was optimal. It is important that sufficiently trained nurses are available, as well as nursing assistants, for proper care for all residents.

Nursing homes with more staffing had better outcomes during the pandemic. A Mathematica report done in Connecticut found that “[n]ursing homes with higher staffing ratings had significantly fewer cases and deaths per licensed bed.”³ An academic study looking at Covid-19 infection incidence and death in Connecticut nursing homes found that “[a]mong facilities with at least 1 confirmed case, every 20 minutes (per resident day) increase in RN staffing was associated with 22% fewer confirmed cases...Among facilities with at least 1 death, every 20 minutes increase in RN staffing significantly predicted 26% fewer COVID-19 deaths.”⁴ The New York State Attorney General reported that New York City facilities with the lowest staffing ratings had almost twice the death rate of facilities with the highest staffing ratings.⁵

But staffing levels are not important just during a pandemic. Many studies have found that staffing levels are too low in many nursing homes.⁶ The National Consumer Voice for Quality Long-Term Care has long advocated for increased staffing, to prevent pressure ulcers, infections, malnutrition, dehydration, injuries from falls, preventable hospitalizations and death. Even good nurses and aides can’t provide quality care if there aren’t enough of them.⁷ Connecticut’s legal services programs have supported raising nursing home staffing levels for many years for the same reasons.

² U.S. Centers for Medicare and Medicaid Services, Abt Associates Inc. *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Report to Congress: Phase II Final*. Baltimore, MD: CMS; 2001.

³ *A Study of the COVID-10 Outbreak and Response in Connecticut Long-Term Care Facilities*, p.19, Mathematica Final Report, September 30, 2020, DPH #2021-0041.

⁴ *COVID-19 Infections and Deaths among Connecticut Nursing Home Residents: Facility Correlates*. Li,Y., Temkin-Greener, H., Gao, S., Cai, Xueya, doi:10.1111/jgs.16689.

⁵ New York State Office of the Attorney General Letitia James, *Nursing Home Response to the COVID-19 Pandemic*, pp. 28-29, Revised January 30, 2021.

⁶ See, for example, *The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes*, Harrington, C., et al., Health Services Insights 2016:9 13-19 doi:10.4137/HIS.S38994.

⁷ <https://theconsumervoice.org/betterstaffing>

The pandemic did not cause the staffing deficiencies in care in nursing homes, although it exacerbated them. Now that our attention has been focused on the needs of these residents, and after they have suffered the highest proportion of illness and death, we owe it to them to make improvements in our long-term care facility systems for the future. A minimum of 4.1 hours of care per resident per day is the least that should be considered, given that this minimum was established over 20 years ago, and backed by further study since. It also offers potential cost savings, as unnecessary hospitalizations are reduced by better care.

Section 9 also addresses social work and recreational staff, which are also critical to a resident's well-being. The recreational staff decrease that was implemented last year was the result of a drafting error. The modification in Section 9 calling for higher recreational staff than was in place prior to January 1, 2022, is important to correct this error and to implement the recommendations of the Governor's 2020-21 Nursing Home and Assisted Living Oversight Working Group, of which I was a member. We fully support this language.

Section 10 of S.B. 989 makes the failure to comply with the staffing requirements of Section 9 a class B violation. It also requires that any civil penalty imposed for such failures be paid from management fees or funds assigned for administrative and general costs. This will assure that the nursing home itself will pay the fine, rather than using dollars intended for resident care.

Other Provisions

Other sections of S.B. 989 and the other proposed legislation on today's agenda are also very important to the quality of life of our nursing home residents, and we support them as well.

Sections 1 and 2 of S.B. 989 and H.B. 6578, AAC Air Conditioning in Nursing Homes, require that nursing homes provide air conditioning for all resident rooms, and establishes a revolving loan program to assist with the cost to the nursing homes. This is a humane provision designed to make our most vulnerable residents as comfortable as possible in their homes.

Section 4 of S.B. 989 and H.B. 6575, AA Encouraging Socialization for Nursing Home Residents by Providing Transportation for Visits with Family, allow nursing homes with available vehicles to transport nonambulatory residents to the nearby homes of their family members. They also require the Commissioner of Social Services to establish a grant program to support such transportation, within available

appropriations. This is a simple authorization to allow nursing homes to improve the lives of residents by encouraging additional socialization.

We also support the provisions of **H.B. 6627, AA Concerning the Office of the Attorney General's Proposed Remedies for Deficient Long Term Care**. This Act would hold accountable any nursing home or residential care home that engaged in any act or practice that results in, or has the potential to result in, bodily injury to a resident. Civil fines will be imposed, and the Attorney General may bring a civil action against such home as well. This statute will give the Attorney General the tools needed to hold nursing homes and residential care homes liable for substantial bodily harms suffered by their residents.

These bills provide an important opportunity to look clearly at nursing homes and make major changes to protect and care for the residents living in them. It is only through transparency and accountability that we can see where the very significant Medicaid dollars we spend each year really go. We need to be sure it is to the care of residents.

Thank you for your time and interest in improving the lives of nursing home residents.

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